

TERMS AND CONDITIONS

INTERNATIONAL ENERGY FUND PROGRAM

AWARD # - -



TERMS AND CONDITIONS

TABLE OF CONTENTS

SECTION	PAGE NO.
1. Contingent Agreement.....	1
2. Attachments and References.....	1
3. Funding Limitations.....	2
4. Due Diligence.....	2
5. Products.....	3
6. Reports.....	3
7. Legal Statement on Reports and Products.....	4
8. Amendments.....	5
9. Contracting and Procurement Procedures.....	5
10. Bonding and Insurance.....	6
11. Permits and Clearances.....	6
12. Equipment.....	7
13. Termination.....	7
14. Travel and Per Diem.....	7
15. License.....	8
16. Standard of Performance.....	9
17. Payment of Funds.....	10
18. Fiscal Accounting Requirements.....	11
19. Indemnification.....	13
20. Disputes.....	13
21. Workers' Compensation Insurance.....	14
22. General Provisions.....	15
23. Certifications & Compliance.....	17

TERMS AND CONDITIONS

1. *Contingent Agreement*

This project is being funded with a contingent award from the California Energy Commission (Commission). Funding for this project was authorized by _____
 ___ No. ___, Chapter ___, Statutes of ___, and consists of funds from the _____.

This Agreement is comprised of the contingent funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for contingent awards. The Commission may impose additional special conditions in this Agreement which address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence.

The Recipient shall sign all six copies of this Agreement and return five signed packages to the Commission's Grants and Loans Office within 30 days. Failure to meet this requirement may result in the forfeiture of this award. When all required signatures are obtained, an executed copy will be returned to the Recipient.

Commission-funded work and/or the expenditure of Commission funds must occur within the term of this Agreement. However, the Commission cannot authorize any payments until all parties sign this Agreement.

2. *Attachments and References*

The following are attached and hereby expressly incorporated into this Agreement.

- Work Statement.
- Budget.
- Resolution of the Recipient or Local Jurisdiction Governing Body (if applicable).
- Resolution of the California Energy Commission (if applicable).
- Special Conditions

The Office of Management and Budget (OMB) Circulars and/or federal regulations identified below are incorporated by reference as part of this Agreement. These Terms and Conditions and any Special Conditions take precedence over the circulars and/or regulations. The OMB Circulars and federal regulations are used to help guide the administration of the award when questions arise during the course of performance of the award. The Commission reserves the right to use as much or as little of each circular or regulation it deems necessary to administer the award in good faith and consistent with prudent fiscal management of public funds. OMB Circulars may be accessed on the OMB web site at www.whitehouse.gov/omb/circulars/index.html or by calling the Office of Administration, Publications Office, at (202) 395-7332.

- Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities).
- 10 CFR Part 600: DOE Financial Assistance Regulations (www.pr.doe.gov/f600toc.html).
- OMB Circular A-87: Cost Principles for State, Local and Tribal Governments.
- OMB Circular A-21: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Institutions of Higher Education (public and private colleges and universities).
- OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted).
- OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations.
- Title 48 CFR, Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations) (www.access.gpo.gov/nara/cfr/cfr-table-search.html)

3. *Funding Limitations*

Any federal, state, and local laws and regulations applicable to your project not expressly listed in this Agreement are incorporated herein as part of this Agreement.

4. *Due Diligence*

The Recipient is required to take timely actions which, taken collectively, move this project to completion. The Commission Project Manager will periodically evaluate the schedule for completion of Work Statement tasks. If the Commission Project Manager determines (1) the Recipient is not being diligent in completing the tasks in the Work Statement or (2) the time remaining in the funding award is insufficient to complete all project work tasks not later than the Agreement term date, the Project Manager may recommend to the Policy Committee of the Commission (Committee) that this Agreement be terminated, and the Committee may, without prejudice to any of its remedies, terminate this Agreement.

5. *Products*

Products are defined as any tangible item specified in the Work Statement. Unless otherwise directed, draft copies of all products identified in the Work Statement shall be submitted to the Commission Project Manager for review and comment. The Recipient will submit an original and two copies of the final version of all products to the Commission Project Manager.

6. *Reports*

a. Progress Reports

The Recipient shall submit progress reports to the Commission Project Manager as indicated in the Special Conditions or Work Statement. At a minimum, each progress report shall include the following:

Work Statement: This section should include a brief restatement of the approved tasks in the Work Statement and a report on the status of each. Included should be a discussion of any products due and whether or not the project is progressing according to schedule. This section also should include a discussion of any problems encountered, proposed changes to the tasks in the Work Statement, and anticipated accomplishments in the upcoming quarter.

Financial Status: This section should include a narrative report comparing costs to date with the approved Budget. The report should state whether or not the project is progressing within the approved Budget and discuss any proposed changes.

Additional Information: Additional information required in the progress reports may be specified in the Work Statement or Special Conditions.

b. Final Reports

A draft final report shall be submitted to the Commission Project Manager no later than 60 days prior to the end of the Agreement term. At a minimum, the report shall include:

- Table of Contents.
- Abstract.
- A brief summary of the objectives of the project and how these objectives were accomplished.

- Any findings, conclusions, or recommendations for follow-up or ongoing activities that might result from the successful completion of the project.
- A statement of future intent of the Recipient to maintain or further develop the project.
- A Payment Request form for the final payment (including any retention).
- Any additional information specified in the Work Statement or Special Conditions.

The Commission Project Manager will review the draft report. The Recipient will incorporate applicable comments and submit the final report (the original and two copies) to the Commission Project Manager.

Upon receipt of the final report, the Commission Project Manager shall ensure that all work has been satisfactorily completed.

c. **Rights in Reports**

The Commission reserves the right to use and reproduce all reports and data produced and delivered pursuant to this Agreement, and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the Commission.

d. **Failure to Comply with Reporting Requirements**

Failure to comply with the reporting requirements contained in this award will be considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards.

7. *Legal Statement on Reports and Products*

No product or report produced as a result of work funded by this program shall be represented to be endorsed by the Commission, and all such products or reports shall include the following statement:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its

employees, or the State of California. The Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights.

8. *Amendments*

Changes to the Work Statement, changes to specific line items in the budget, or both, may be made under certain conditions. Such changes must not alter the original scope or purpose of the project or program as proposed in the application. Such changes must not appreciably affect the value of the project or program. Work Statement changes and/or cumulative transfers among budget line items that exceed 10 percent of the award require advance written approval of the Commission Project Manager and Grants and Loans Office. All requests must be submitted directly to the Commission Project Manager in writing and include a description of the proposed change, revised attachment(s), and the reasons for the change. If the change is approved, the affected sections of the Agreement will be amended and signed by the Commission Project Manager, Grants and Loans Office, and the Recipient's authorized representative.

9. *Contracting and Procurement Procedures*

This section provides general requirements for an agreement between the Recipient and a third party ("subcontractor").

The Recipient is required, where feasible, to employ contracting and procurement practices that promote open competition for all goods and services needed to complete this project. Recipient shall obtain price quotes from an adequate number of sources for all subcontracts.

Subcontracting criteria are specified in the applicable OMB Circulars and/or federal regulations incorporated by reference in this Agreement. The Commission will defer to the Recipient's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this Agreement and any OMB Circulars and/or federal regulations incorporated by reference in this Agreement.

Upon request, the Recipient must submit to the Commission Project Manager a copy of all solicitations for services or products required to carry out the terms of this Agreement, copies of the proposals or bids received, and copies of subcontracts executed. If a specific subcontractor was identified in the original application and the grant was evaluated based in part on this subcontractor's qualifications, then prior written approval from the Commission Project Manager is required before substituting a new subcontractor.

The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this Agreement.

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.
- Provisions which allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- Any additional requirements specified in the OMB Circulars incorporated by reference in this Agreement.
- The Standard of Performance provisions specified in this Agreement.
- Audit provisions regarding record retention specified in this Agreement.
- Language conforming to the "Indemnification" provision in this Agreement.
- Language conforming to the "License" provision in this Agreement.

Failure to comply with the above requirements may result in the termination of this Agreement.

10. *Bonding and Insurance*

The Recipient will follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in the OMB Circulars incorporated by reference in this Agreement.

11. *Permits and Clearances*

The Recipient is responsible for ensuring all necessary permits and environmental documents are prepared and clearances are obtained from the appropriate agencies.

12. *Equipment*

Title to equipment acquired by the Recipient with Commission funds shall vest in the Recipient. The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Commission funds and shall not encumber the property without Commission Project Manager approval. When no longer needed for the original project or program, the Recipient shall contact the Commission Project Manager for disposition instructions.

Recipient should refer to the OMB Circulars and/or federal regulations incorporated by reference in this Agreement.

13. *Termination*

This project may be terminated for any reason set forth below.

a. With Cause

In the event of any breach by the Recipient of the conditions set forth in this Agreement, the Commission Policy Committee may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Recipient.

b. Without Cause

The Commission Policy Committee may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Recipient by certified mail, return receipt requested. In such event, the Recipient agrees to use all reasonable efforts to mitigate the Recipient's expenses and obligations hereunder. Also in such event, the Commission shall pay the Recipient for all satisfactory services work performed and expenses incurred within 30 days after such notice of termination which could not by reasonable efforts of the Recipient have been avoided, but not in excess of the maximum payable under this Agreement.

14. *Travel and Per Diem*

For purposes of payment, Recipient's headquarters shall be considered the location of the Recipient's office where the employees assigned responsibilities for this award are permanently assigned. Travel expenditures not listed in this section cannot be reimbursed.

Travel not listed in the Budget section of this Agreement shall require prior written authorization from the Commission Project Manager. Recipient shall be reimbursed for authorized travel and per diem up to, but not to exceed, the rates allowed nonrepresented

state employees. A copy of the current allowable reimbursement rates can be obtained by contacting the Commission's Grants and Loans Office at (916) 654-4381.

Travel expense claims must detail expenses using the allowable rates, and Recipient must sign and date the travel expense claim before submitting the travel expense claim to the Commission for payment. Expenses must be listed by trip including dates and times of departure and return. Travel expense claims and supporting receipts and expense documentation shall be attached to the Recipient's Payment Request. A vehicle license number is required when claiming mileage, parking, or toll charges. Questions regarding allowable travel expenses or per diem should be addressed to the Commission Project Manager.

15. *License*

The Commission shall be granted a no-cost, nonexclusive, nontransferable, irrevocable worldwide license to use or have practiced for or on behalf of the State of California inventions developed hereunder and patents or patent applications derived from such inventions. Recipient must obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in the patented subject inventions.

The Commission makes no claim to intellectual property that existed prior to this Agreement and was developed without Commission funding. If applicable, the Recipient gives notice that the items listed in the Intellectual Property attachment or exhibit have been developed without Commission funding and prior to the start of this Agreement. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this Agreement, may be necessary if Commission funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights.

The Commission shall be granted the no-cost use of the technical data first produced or specifically used in the performance of this Agreement.

The Commission shall be granted a royalty-free nonexclusive, irrevocable, nontransferable worldwide license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of this Agreement.

16. *Standard of Performance*

Recipient, its subcontractors and their employees, in the performance of Recipient's work under this award shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the Recipient's field.

Any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, as directed by Commission Project Manager, shall be borne in total by Recipient and not the Commission. The failure of a project to achieve the performance goals and objectives stated in the Work Statement is not a basis for requesting re-performance unless the work conducted by Recipient and/or its subcontractors is deemed by the Commission to have failed the foregoing standard of performance.

In the event Recipient/subcontractor fails to perform in accordance with the above standard:

- (1) Recipient/subcontractor will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of the Commission Project Manager. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Recipient/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission;
- (2) The Commission shall provide a new schedule for the re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and
- (3) The Commission shall have the option to direct Recipient/subcontractor not to re-perform any task which was not performed to the reasonable satisfaction of the Commission Project Manager pursuant to application of (1) and (2) above. In the event the Commission directs Recipient/subcontractor not to re-perform a task, the Commission and Recipient shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

17. Payment of Funds**a. Payment Requests**

The Recipient may request payment from the Commission at any time during the term of this Agreement although it is preferred that payment requests be submitted with the progress reports.

Payments will generally be made on a reimbursement basis for Recipient expenditures, i.e., after the Recipient has paid for a service, product, supplies, or other approved budget item. No reimbursement for food or beverages shall be made other than allowable per diem charges.

As a general rule, advance payments are not allowed. The Commission, at its sole discretion, may honor advance payment requests if warranted by compelling need. Advance payments shall only be made upon the satisfaction of conditions intended to protect Commission funds from loss or misuse, including (1) depositing all advance payments into a separate interest-earning account; (2) reporting interest earned on advance payments to the Commission Project Manager; (3) the accounting of all advance payments within a timeframe specified by the Grants and Loans Office; (4) returning all unused advance payments and interest or portion thereof, within 60 days of the termination of this Agreement; and (5) other conditions as specified by the Grants and Loans Office.

Funds in this award have a limited period in which they must be expended. All Recipient expenditures must occur prior to the end of the term of this Agreement.

b. Documentation

All payment requests must be submitted using a completed Payment Request form (Exhibit A). This form must be accompanied by an itemized list of all charges and copies of all receipts or invoices necessary to document these charges for both Commission and match share. Any payment request that is submitted without the itemization will not be authorized. If the itemization or documentation is incomplete, inadequate, or inaccurate, the Commission Project Manager will inform the Recipient and hold the invoice until all required information is received or corrected. Any penalties imposed on the Recipient by a subcontractor because of delays in payment will be paid by the Recipient.

Any receipt or invoice in foreign currency must be converted to dollars, and the conversion rate must be included in your itemization.

c. Release of Funds

The Commission Project Manager will not process any payment request during the Agreement term until the following conditions have been met:

- All required reports have been submitted and are satisfactory to the Commission Project Manager.
- All applicable special conditions have been met.
- All appropriate permits or permit waivers from governmental agencies have been issued to the Recipient and copies have been received by the Commission Project Manager.
- All products due have been submitted and are satisfactory to the Commission Project Manager.
- Other prepayment conditions as may be required by the Commission Project Manager have been met. Such conditions will be specified in writing ahead of time, if possible.

d. Retention

It is the Commission's policy to retain 10 percent of any payment request or 10 percent of the total Commission award at the end of the project. After the project is complete the Recipient must submit a completed payment request form requesting release of the retention. The Commission Project Manager will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

e. State Controller's Office

Payments are made by the State Controller's Office.

18. *Fiscal Accounting Requirements*

The Recipient shall review and comply with the administrative requirements outlined in the applicable sections of the OMB circulars and/or federal regulations incorporated as part of the funding Agreement. The OMB circulars and/or federal regulations are supplemented with the following requirements:

a. Accounting and Financial Methods

The Recipient shall establish a separate ledger account or fund for receipt and disbursement of Commission funds for each project funded by the Commission. Expenditure details must be maintained in accordance with the approved budget details using appropriate accounting practices.

b. Retention of Records

The Recipient shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the project has been formally concluded, or final payment received, whichever is later, unless otherwise specified in the funding Agreement.

Records for nonexpendable personal property acquired with Commission funds shall be retained for three years after its final disposition.

c. Audits

Upon written request from the Commission, the Recipient shall provide detailed documentation of all expenses at any time throughout the project. In addition, the Recipient agrees to allow the Commission or any other agency of the state, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project during the term of this Agreement and for a period of three (3) years thereafter. Further, the Recipient agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the state. Recipient agrees to include a similar right to audit in any subcontract.

Recipients are strongly encouraged to conduct annual audits in accordance with the single audit concept. The Recipient should provide two copies of the independent audit report and any resulting comments and correspondence to the Commission Project Manager within 30 days of the completion of such audits.

d. Match or Cost Share (match)

If the Budget includes match, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of Commission funds. Commission funds will be released only if the required match percentages are expended. The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind services) and provide complete documentation of expenditures as described under "Payment of Funds."

19. Indemnification

The Recipient agrees to indemnify, defend, and save harmless the state, its officers, agents, and employees from any and all claims and losses accruing or resulting to Recipient and to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Recipient in the performance of this Agreement.

20. Disputes

In the event of a dispute or grievance between Recipient and the Commission regarding this Agreement, the following two-step procedure shall be followed by both parties. Recipient shall continue with responsibilities under this Agreement during any dispute.

a. Commission Dispute Resolution

The Recipient shall first discuss the problem informally with the Commission Project Manager. If the problem cannot be resolved at this stage, the Recipient must direct the grievance together with any evidence, in writing, to the Commission Grants and Loans Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Recipient's position and the remedy sought. The Commission Grants and Loans Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Recipient. The Grants and Loans Officer shall respond in writing to the Recipient, indicating a decision supported by reasons. Should the Recipient disagree with the Grants and Loans Officer decision, the Recipient may appeal to the second level.

The Recipient must prepare a letter indicating why the Grants and Loans Officer's decision is unacceptable, attaching to it the Recipient's original statement of the dispute with supporting documents, along with a copy of the Grants and Loans Officer's response. This letter shall be sent to the Executive Director at the Commission within ten (10) working days from receipt of the Grants and Loans Officer's decision. The Executive Director or designee shall meet with the Recipient to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Recipient within twenty (20) working days of receipt of the Recipient's letter. The Executive Director may exercise the option of presenting the decision to the Commission at a business meeting. Should the Recipient disagree with the Executive Director's decision, the Recipient may appeal to the Commission at a regularly scheduled business meeting. Recipient will be provided with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

b. Mutual Agreement for Arbitration

Should the Commission's Dispute Resolution procedure described above fail to resolve a dispute or grievance to the satisfaction of the Recipient, either party may seek to have the dispute or grievance resolved through binding arbitration. Both parties must consent before submitting the dispute to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgement may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the date of the termination of this Agreement, irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance.

The cost of arbitration shall be borne by the parties as follows:

- i) The AAA's administrative fees shall be borne equally by the parties;
- ii) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- iii) Witness expenses for either side shall be paid by the party producing the witness;
- iv) Each party shall bear the cost of its own travel expenses;
- v) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Agreement funds. Both parties must agree, in writing, to utilize Agreement funds to pay for arbitration costs.

If the parties do not mutually agree to binding arbitration, the sole forum to resolve the dispute is State court.

21. *Workers' Compensation Insurance*

- a. Recipient hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees

to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.

- b. If Recipient is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.

22. *General Provisions*

a. Governing Law

It is hereby understood and agreed that this Agreement shall be governed by the laws of the State of California as to interpretation and performance.

b. Independent Capacity

The Recipient, and the agents and employees of the Recipient, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

c. Assignment

Without the written consent of the Commission in the form of a formal written amendment, this Agreement is not assignable or transferable by Recipient either in whole or in part.

d. Timeliness

Time is of the essence in this Agreement.

e. Unenforceable Provision

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

f. Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

g. Assurances

The Commission reserves the right to seek further written assurances from the Recipient and its team that the work of the project under this Agreement will be performed consistent with the terms of the Agreement.

h. Change in Business

- (1) Recipient shall promptly notify the Commission of the occurrence of each of the following:
 - (a) A change of address.
 - (b) A change in the business name or ownership.
 - (c) The existence of any litigation or other legal proceeding affecting the project.
 - (d) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
 - (e) Receipt of notice of any claim or potential claim against Recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Commission's rights.
- (2) Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Commission is not satisfied that the new entity can perform as the original Recipient, the Commission may terminate this Agreement as provided in the termination paragraph.

i. Survival of Terms

It is understood and agreed that certain provisions shall survive the completion or termination date of this Agreement for any reason. The provisions include, but are not limited to:

- "Payments of Funds"
- "Equipment"
- "Change in Business"
- "Disputes"
- "Termination"
- "Audit"
- "Indemnification"
- "License"
- "Fiscal Accounting Requirements"

23. *Certifications & Compliance*

a. Federal, State & Local Laws

Recipient shall comply with all applicable federal, state and local laws, rules and regulations.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

c. Drug Free Workplace Certification

By signing this Agreement, the Recipient hereby certifies under penalty of perjury under the laws of the State of California that the Recipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- i) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).

- ii) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- iii) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:
 - Will receive a copy of the company's drug-free policy statement;
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. Recycling Certification

The Recipient shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Recipient may certify that the product contains zero recycled content.

e. Child Support Compliance Act (Applicable to California Employers)

For any Agreement in excess of \$100,000, the Recipient acknowledges that:

- i) It recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- ii) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

f. Americans With Disabilities Act

By signing this Agreement, Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

g. Union Activity

By signing this Agreement, the Recipient hereby certifies that Recipient will not use Commission funds for any expenses to assist, promote, or deter union organizing. Any Recipient that makes expenditures to assist, promote, or deter union organizing shall maintain records sufficient to show that state funds have not been used for those expenditures. (Government Code Section 16645.2)

AWARD # - -

EXHIBIT A
PAYMENT REQUEST FORM

STATE OF CALIFORNIA
 FINANCIAL STATUS REPORT OR PAYMENT REQUEST
 Grant
 CEC 211-(a) (Rev. 1/01)

CALIFORNIA ENERGY COMMISSION

Payment Request No.:

Instructions are on the reverse

Recipient (Name and Address)		Type of Request <input type="checkbox"/> Reimbursement <input type="checkbox"/> Status Report Only <input type="checkbox"/> Release Retention	Amount of this Request \$ _____
		Period Covered by this Request to	
Grant No.	Recipient ID No.	Approved Project Term to	Funding History Funds Requested to Date: \$ _____ Funds Received to Date: \$ _____ Expenses to Date: \$ _____ Funds on Hand: \$ _____ Interest Earned to Date: \$ _____

ENERGY COMMISSION SHARE Line Item	Budget	Expenses this Period	Expenses to Date	Obligations Not Yet Paid	Remaining Balance
Personnel					
Fringe Benefits					
Travel					
Equipment					
Supplies					
Contractual					
Construction					
Other					
Indirect					
TOTAL					

MATCH SHARE Line Item	Budget	Expenses this Period	Expenses to Date	Obligations Not Yet Paid	Remaining Balance
Personnel					
Fringe Benefits					
Travel					
Equipment					
Supplies					
Contractual					
Construction					
Other					
Indirect					
TOTAL					

GRAND TOTAL					
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RECIPIENT CERTIFICATION		ENERGY COMMISSION USE ONLY (-NS-)
I certify to the best of my knowledge and belief that this report is correct and complete and all outlays and obligations are for the purposes set forth in the funding Agreement. No grant funds will be used to assist, promote, or deter union organizing.		Amount Authorized
Signature of Authorized Certifying Officer	Date	Retention Yes _____ No _____
Type or Print Name and Title	Phone	Fiscal Year
ENERGY COMMISSION APPROVALS		Appropriation Code
Commission Project Manager	Date	
Commission Program Manager	Date	Retention
Grants Office	Date	Amount Scheduled

INSTRUCTIONS

Payment Request No.: Begin with the number 1 on your first payment request and consecutively number each subsequent payment request. The last payment request should include the notation, "Final."

Recipient (Name and Complete Address): Same as "Recipient" on the Grant Agreement. Address should include the city, state, and zip code.

Type of Request: Indicate if this is a "Reimbursement" or "Status Report Only." Be sure to provide backup documentation. If no funds are being requested, check "Status Report Only."

Amount of this Request: This line shows the amount currently being requested. Indicate the amount being requested.

Period Covered by this Report: The time period covered by this request. The first day of the period should be the day after the last day covered by your previous report. Example: 1/14/94 to 3/31/94.

Grant No.: Same as "Grant Number" on the Grant Agreement. This is the eight digit code assigned by the Energy Commission (example 961-93-000).

Recipient ID No.: This space is for an account number or other identifier that may be assigned by the Recipient (optional).

Approved Project Term: This is the entire project period beginning with the date the project starts through the end date. This date should match the "Term" on the Grant Agreement unless you have received a term extension.

Total Funds Requested to Date: Show the total of all funds requested from the Energy Commission prior to this request.

Funds Received to Date: Show the total amount of funds received from the Energy Commission prior to this request. "Funds Requested to Date" minus any retention withheld equals "Funds Received to date".

Total Expenses to Date: Show the total expenses from the beginning of the project through and including the period covered by this report. This amount should be the same as the "Grand Total" expenses to date.

Funds on Hand: This should be filled in only if you have received any advance funds from the Commission. If you have, show the balance of funds received. ("Funds Received to Date" minus "Expenses to Date" equals "Funds on Hand.")

Interest Earned to Date: Show all interest earned on previously advanced funds.

Line Items: The following budget categories apply to all expenditures invoiced.

- **Budget:** Show by line item the budget as shown in the Grant Agreement.
- **Expenses this Period:** Show by line item the actual payments made by the Recipient during the period covered by this report.
- **Expenses to Date:** Show by line item the cumulative total of all expenses from the beginning of the project through and including the period covered by this report.
- **Obligations Not Yet Paid:** Show by line item all funds obligated on purchase orders, contracts, etc. for which you have received an invoice but have not yet paid.
- **Remaining Balance:** Show by line item the funds available for expenses or obligations. "Budget" minus "Expenses to Date" minus "Obligations Not Yet Paid" equals "Remaining Balance."

Certification: Name, title and signature of authorized certifying official (usually the grant Recipient's project manager).

Submit original and one copy to:

California Energy Commission
Accounting Office
1516 Ninth Street, MS # 2
Sacramento, CA 95814

SPECIAL CONDITIONS

1. REPAYMENT TERMS

This project is being funded with a contingent award from the California Energy Commission's (Commission) International Energy Fund (IEF). Public Resources Code, Section 25696.5, states that companies that receive "direct financial assistance" from the IEF must reimburse the funds to the Commission when the assistance is "substantial and essential for the completion of a specific identifiable project," and "the resulting project is producing revenues."

All monies disbursed under this award are considered "substantial and essential for the completion of a specific identifiable project." The Recipient, its successors and assignees must reimburse the Commission's IEF fund for all monies disbursed under this award, plus interest, if Recipient receives revenue and net positive cash flow (as determined by the Commission) from the specific project identified in the Work Statement.

In order for the Commission to release the final disbursement of IEF funds used for preconstruction activity, an evaluation of the project status will occur to assess repayment options. The Commission will make a determination to:

- Waive repayment by converting the contingent award to a grant if there is no potential of revenue from the project, or
- Monitor the Recipient and project annually if there is potential of future revenue, or
- Convert the contingent award to a loan and establish a repayment schedule if revenue and net positive cash flow have been realized by the end of the preconstruction activity.

A contingent award that is converted to a loan shall bear an interest rate equal to the average rate earned by the State's Pooled Money Investment Account for the ninety (90) day period preceding the conversion date. The term of repayment shall not exceed five (5) years from the conversion date. Loans may be prepaid without penalty. Upon conversion to a loan, the Commission and the Recipient shall execute an amended agreement specifying the exact terms of repayment. All loans must be fully collateralized. Collateral will consist of existing business or personal assets, as required, to fully secure the award. The recipient shall sign a "California Energy Commission Security Agreement" and all other instruments required by the Commission. The Commission reserves the right to accept or reject all collateral offered.

2. ANNUAL REPORTS AND RECIPIENT REQUESTS

After completion of the funded activity, the recipient must submit annual reports to the Commission Project Manager. These reports are due at each anniversary of the activity completion and shall include:

- A summary of all material events and actions associated with the project;
- A discussion of future intent of the recipient to further develop the project;
- The recipient's most recent year end financial statements, including balance sheet, income statement, and other schedules or notes;
- A statement whether the conditions for repayment of this award have been met.

Additionally, the recipient shall submit any additional information and documentation the Commission Project Manager deems necessary to determine if the conditions for repayment have been met. If the Commission Project Manager determines that these conditions have been met, your award will be converted to a loan and repayment will begin.

Concurrent with the annual reporting, the Recipient may petition the Commission to waive repayment by converting the contingent award to a grant. A Recipient must include specific reasons for the petition and appropriate documentation to validate these reasons. The petitioning Recipient shall submit any additional information and documentation the Commission Project Manager deems necessary to evaluate the petition. Upon receipt of all requested information and documentation, the Commission will make a determination to:

- Waive repayment by converting the contingent award to a grant if there is no potential of revenue from the project, or
- Continue monitoring the Recipient and project annually if there is potential of future revenue, or
- Convert the contingent award to a loan and establish a repayment schedule if revenue and net positive cash flow have been realized or is expected in the near future.

3. DEFINITIONS

Recipient means the California firm entering into this funding agreement with the Commission.

Activity means the specific tasks funded by the IEF and Recipient match share, and identified in the Work Statement.

Project means the entire effort supported by the Commission, applicant, and/or third party sources, from initial planning stages through and including operational, maintenance, and decommissioning stages. The specific identified project is described in the Work Statement.

Substantial and essential means any and all monies disbursed to the Recipient by the Commission.

Revenue means any amount of monetary funds received by the Recipient from a joint venture, distribution agreement, licensing agreement, equipment sales, power plant construction, energy purchase agreements, royalties, fees, consultant services, engineering services, technical analysis services, feasibility studies, and any other efforts that produce monetary return related to the project. The determination of what is and what is not revenue will be based on generally accepted accounting principles (GAAP) and subject to the approval of the Commission Project Manager.

Net cash flow means the difference between project revenue and project expenses for a given period.

Project expenses means all costs reasonably allocated to the project using GAAP and subject to the approval of the Commission Project Manager.

Summary of Allowable Travel and Per Diem Expenses

Recipients shall be reimbursed for travel and per diem on the same basis as nonrepresented State employees. The rates listed below will be in effect for the term of this Agreement, unless and until the State's per diem reimbursement rates for nonrepresented employees are revised. Travel expenses not listed in this section cannot be reimbursed.

Travel that has not been budgeted in the Budget shall require prior written authorization from the Commission Project Manager. Travel shall be paid from the Recipient's office location where the employees assigned responsibilities for this agreement are permanently assigned.

Recipient must document and prepare travel expense claims as follows:

- Recipient's invoice must detail expenses using the rates listed below.
- Expenses must be listed by trip including dates and times of departure and return, in order to establish appropriate per diem rates (employee's travel claim may be attached instead).
- Attach required receipts for travel expenses claimed (receipts are not required for meals or incidentals within allowable rates, but you must retain all meal receipts for audit by the State or IRS).

Transportation Rates

- 1) Common carrier, airline coach class or equivalent are reimbursable in accordance with receipts or vouchers attached to Recipient's invoice verifying expenditure.
- 2) Private or Recipient-owned automobile mileage is reimbursable up to 34 cents per mile. However, if travel by common carrier is more economical than by automobile, the rate for the common carrier will be reimbursed.
- 3) Rental car receipts must be attached to Recipient's travel expense claim. However, if taxi service is less expensive than a rental car the rate for taxi will be reimbursed. **NOTE: Insurance coverage is not reimbursable.**
- 4) Parking fees, taxi fees, tolls and public transit fees may be reimbursed up to \$10.00 without receipt.

In-State Travel Per Diem Rates

- 1) Apply to travel **more than 50 miles** away from Recipient's headquarters,
- 2) Per diem is reimbursable as follows:
 - a) **Less than 24 hour trip**, Recipient shall be reimbursed for meals and lodging according to the following rates:

Breakfast:	Up to \$ 6.00, if began at or prior to 6 a.m. and terminated at or after 9 a.m.
Lunch:	Not reimbursed on trip of less than 24 hours
Dinner:	Up to \$18.00, if began at or prior to 4 p.m. and terminated at or after 7 p.m.
Incidentals:	Not reimbursed on trip of less than 24 hours

- b) **More than 24 hours,** Recipient will be reimbursed for each 24 hour period for meals, lodging and incidentals according to the following rates:

Breakfast: Up to \$ 6.00 if trip began at or before 6 am.
Lunch: Up to \$ 10.00 if trip began at or before 11 am.
Dinner: Up to \$18.00 if trip began at or before 5 pm.
Incidentals: Up to \$6.00

- c) Time Frame for fractional day after 24 hours of travel:

Breakfast: If trip ends at or after 8 a.m.
Lunch: If trip ends at or after 2 p.m.
Dinner: If trip ends at or after 7 p.m.

3) **Lodging (Receipt Required)**

- a) Statewide, except in b) and c) below, actual receipted lodging up to \$84.00 per night plus tax.
- b) When required to obtain lodging in the counties of Los Angeles and San Diego, reimbursement will be for actual receipted lodging to a maximum of \$110.00 per night plus tax.
- c) When required to obtain lodging in the counties of Alameda, San Francisco, San Mateo and Santa Clara, reimbursement will be for actual receipted lodging to a maximum of \$140.00 per night plus tax.

Out-of-State Travel Per Diem Rates

Meals/Incidentals: Same as in-state rates

Lodging: Actual expense with receipt (subject to Commission Project Manager approval).

Out-of-Country Travel Per Diem Rates

Meals/Incidentals: Actual expense in accordance with foreign travel rates published by U.S. Government.

Lodging: Actual expense with receipt (subject to Commission Project Manager approval).